

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04-40208-NMG

ROBERT WHITE,

Appellant,

v.

CHAPTER 7 TRUSTEE,

Appellee.

ON APPEAL FROM AN ORDER OF
THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(WESTERN DIVISION)

**APPELLEE'S RESPONSE TO APPELLANT'S
MOTION TO EXPEDITE APPEAL**

John A. Burdick (the "Appellee"), the Chapter 7 trustee of CK Liquidation Corporation (the "Debtor"), hereby responds to the Motion to Expedite Appeal dated April 27, 2005 (the "Motion"). In the Motion, Robert White (the "Appellant") seeks an expedited determination of this appeal so that he may join lower court proceedings or consolidate his appeals, depending on the outcome of this Court's ruling. While the Appellee does not oppose the relief sought by the Motion¹, the Appellant's arguments in favor of the Motion deserve no consideration from this Court and, in any event, are not accurate.

Specifically, in the Motion, the Appellant contends that remand is appropriate because his right to due process has been denied. Contrary to Appellant's assertion, the Bankruptcy Court

¹ By not opposing the relief sought by the Motion, the Appellee does not agree that the Appellant may join lower court proceedings or consolidate his appeals.

provided due process when it denied the Appellant's Motion to Vacate Sale Order Based on Fraud on this Court (the "Motion to Vacate") – a motion brought pursuant to Fed. R. Civ. P. 60(b), made applicable to the bankruptcy proceeding by Fed. R. Bankr. P. 9024.² As was noted in its Order denying the Motion to Vacate, the Bankruptcy Court, following the guidance provided by the United States Court of Appeals for the First Circuit in Commonwealth of Puerto Rico v. SS Zoe Colocotroni, 601 F.3d 39, 42 (1st Cir. 1979), was "obligated to expeditiously review a motion for reconsideration of an order under appeal, and, if found to be without merit, deny the motion." AA. 3-4.³ Upon review of the Motion to Vacate, the Bankruptcy Court denied the Appellant's motion, finding it to be "wholly without merit . . ." AA. 4. Accordingly, the Appellant was afforded all of the process due a litigant that files a 60(b) motion pending an appeal.

Dated: May 11, 2005

JOHN A. BURDICK,
CHAPTER 7 TRUSTEE

By his counsel,

/s/ Christopher M. Candon
 Michael J. Goldberg (BBO #551869)
 Christopher M. Candon (BBO #650855)
 COHN WHITESELL & GOLDBERG LLP
 101 Arch Street
 Boston, MA 02110
 Tel: (617) 951-2505
 Fax: (617) 951-0679
 Email: *candon@cwgl11.com*

² At the time the Motion to Vacate was filed, the Appellant's appeal of the Bankruptcy Court's order approving the sale of substantially all of the Debtor's assets (the "Sale Order") was pending before this Court. On November 8, 2004, this Court affirmed the Sale Order. The Appellant has appealed to the United States Court of Appeals for the First Circuit.

³ References to "AA. __" are to page numbers in the Appellant's Appendix submitted in this case.

CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on May 11, 2005, I caused copies of the foregoing **Appellee's Response to Appellant's Motion to Expedite Appeal** to be served by first class mail upon the parties on the service list below.

SERVICE LIST

Robert White
243-A North Maple Avenue
Manteca, CA 95336

John A. Burdick, Esq.
340 Main Street, Suite 800
Worcester, MA 01608

James Wilton, Esq.
Ropes & Gray, LLP
One International Place
Boston, MA 02210

John Loughnane, Esq.
Gadsby Hanna LLP
225 Franklin Street
Boston, MA 02210

Harold Bowers
215 N. Auburndale Street
Memphis, TN 38112

Richard E. Mikels, Esq.
Timothy J. Langella, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Office of the United States Trustee
Attn: Richard King, Esq.
Franklin Square Tower
600 Main Street, Suite 200
Worcester, MA 01608

/s/ Christopher M. Candon
Michael J. Goldberg (BBO #551869)
Christopher M. Candon (BBO #650855)
COHN WHITESELL & GOLDBERG LLP
101 Arch Street
Boston, MA 02110
Tel: (617) 951-2505
Fax: (617) 951-0679
Email: *candon@cwgl11.com*

g:\data\960P\Response to mo to expedite2